

EXHIBIT A

Alexander, Andrew

From: Ilardi, Chris T. <chris.ilardi@kirkland.com>
Sent: Monday, April 11, 2022 9:33 AM
To: Alexander, Andrew; Simmons, Joshua L.
Cc: #Hayden-TakeTwo; Cendali, Dale M.; Means, Miranda; mcavanagh@mcdonaldhopkins.com; Cipolla, John; McMullen, Dan; Likens, Dustin; Pinter, Kimberly; Hayden-TakeTwo
Subject: RE: Hayden v. 2K--Motion for Leave to Amend

Dear Andy,

Take-Two will not withdraw its opposition to Plaintiff's motion to amend the Complaint. Contrary to what is stated in your email, Take-Two would still be prejudiced if Plaintiff agreed to not seek discovery for *NBA 2K21* and *NBA 2K22* other than an updated financial spreadsheet. As you are well aware, not only is fact discovery closed, but so is expert discovery, dispositive motion briefing, and *Daubert* briefing. If Plaintiff were to amend the Complaint to add these games at this very late stage, then, as explained in Take-Two's opposition brief, that would also potentially necessitate new expert discovery, *Daubert* motions related to that discovery, and summary judgment motions on the eve of trial. See, e.g., Dkt. 142 at 3 ("Take-Two will be significantly prejudiced by allowing amendment now as it will require new fact discovery, and potentially require new expert discovery, *Daubert* motions related to that discovery, and summary judgment motions, despite Plaintiff's misleading claim to the contrary."). This prejudice is in addition to, and no less significant than, the prejudice from the additional fact discovery. *Id.* at 8. And, as Take-Two explained in its opposition brief, given Plaintiff's delay in moving to amend, these prejudices have become even more acute, *id.* at 8, 12–14, particularly given the changed circumstances since September 2021 when Take-Two offered a path forward that Plaintiff declined, *id.* at 11.

Best regards,
Chris

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From: Alexander, Andrew <AAlexander@Calfee.com>
Sent: Thursday, April 7, 2022 11:20 AM
To: Simmons, Joshua L. <joshua.simmons@kirkland.com>
Cc: #Hayden-TakeTwo <HaydenTakeTwo@kirkland.com>; Cendali, Dale M. <dale.cendali@kirkland.com>; Ilardi, Chris T. <chris.ilardi@kirkland.com>; Means, Miranda <miranda.means@kirkland.com>; mcavanagh@mcdonaldhopkins.com; Cipolla, John <JCipolla@Calfee.com>; McMullen, Dan <dmcmullen@calfee.com>; Likens, Dustin <DLikens@Calfee.com>; Pinter, Kimberly <kpinter@calfee.com>; Hayden-TakeTwo <Hayden-TakeTwo@Calfee.com>
Subject: Hayden v. 2K--Motion for Leave to Amend

Josh,

After reviewing Take-Two's opposition to Mr. Hayden's motion for leave to amend his complaint, it is apparent that Take-Two's only purported prejudice is that, if the Court allows the amendment, Take-Two would then have to supplement responses to discovery requests that use the term "Accused Games" for *NBA 2K21* and *NBA 2K22* under

Rule 26. Would Take-Two agree to withdraw its opposition if Mr. Hayden agreed to not seek supplementation for the 2 new games on those grounds, other than financial information for NBA 2K21 and 2K22?

Regards,

Andy

Andrew W. Alexander

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